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FISCAL IMPACT STATEMENT

LS 6832

BILL NUMBER: SB 345

NOTE PREPARED: Feb 28, 2008

BILL AMENDED: Feb 25, 2008

SUBJECT: Labor and Safety.

FIRST AUTHOR: Sen. Weatherwax

FIRST SPONSOR: Rep. Niezgodski

BILL STATUS: As Passed House

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: (Amended) This bill does the following.

Data Match System: This bill requires the Department of Workforce Development to operate a data match system with financial institutions doing business in Indiana for use only in the collection of unpaid final assessments of employer contributions for the state's unemployment insurance system.

Employee Classification: This bill provides that an individual performing services for a contractor is considered to be an employee of the contractor, with certain exceptions. It provides for investigations of the employment relationship between an individual and a contractor by the Department of Labor, procedures to be followed for investigations, and for various civil penalties to be assessed by the Department of Labor for: (1) the failure to properly classify the individual; and (2) retaliation against certain persons. This bill provides that certain information pertaining to employee classification shared between several state agencies is confidential and may not be published or open to public inspection.

Health Saving Account: Money in a health saving account established under Section 223 of the Internal Revenue Code of 1986 would not be subject to judgements.

Unauthorized Aliens: This bill requires the Superintendent of the State Police Department to: (1) negotiate terms of a memorandum of understanding concerning a pilot project for the enforcement of federal immigration and customs laws; and (2) designate appropriate law enforcement officers to be trained under the memorandum.

The bill prohibits an employer from knowingly employing, after June 30, 2009, an unauthorized alien. It

authorizes the Attorney General to: (1) investigate a complaint that an employer knowingly employed an unauthorized alien; and (2) notify United States Immigration and Customs Enforcement and the Department of Labor (Department) under certain conditions.

This bill authorizes the Department to initiate administrative proceedings against an employer for knowingly employing an unauthorized alien. The bill requires an administrative hearing to be conducted by an administrative law judge (ALJ) employed by the Department. It allows an ALJ to order certain remedies if the ALJ determines an employer knowingly employed an unauthorized alien. The bill also requires an employer to verify the employment eligibility of an employee through the federal employment verification pilot program. It prohibits the Department from initiating an administrative proceeding against an employer that verifies the employment authorization of an employed individual through the pilot program. The bill establishes an affirmative defense if the employer complied in good faith with the federal employment verification requirements.

The bill also makes it a Class B misdemeanor to file a complaint, knowing the complaint is false or frivolous, with the Attorney General.

This bill also prohibits a governmental body from enacting an ordinance, resolution, rule, or policy that prohibits or limits another governmental body from sending, receiving, maintaining, or exchanging information on the citizenship or immigration status of an individual. The bill also allows a person to bring an action to compel a governmental body to comply with the prohibition.

The bill prohibits a state agency or political subdivision from entering into or renewing a public contract for services with a contractor if the state agency or political subdivision knows that the contractor employs or contracts with unauthorized aliens. It allows a contractor of a public contract for services to terminate a contract with a subcontractor if the subcontractor employs or contracts with unauthorized aliens.

The bill requires the Department of Workforce Development to verify the lawful presence of certain individuals to determine the individual's eligibility for unemployment benefits through the SAVE program.

Commission on Hispanic/Latino Affairs: This bill also requires the Commission on Hispanic/Latino affairs to study and submit a report to the Legislative Council on the: (1) requirements a person must meet to qualify for naturalization; and (2) the process by which United States citizenship is conferred upon a person.

Immigration Cost Impact Commission: The bill establishes the Immigration Cost Impact Commission to study and file a report with the Legislative Council on certain financial and other issues related to illegal immigration.

Appropriations: This bill appropriates: (1) \$1,000,000 to the Superintendent of the State Police; (2) \$500,000 to the Attorney General; (3) \$50,000 to the Commission on Hispanic/Latino Affairs; and (4) \$50,000 for the Immigration Cost Impact Commission.

The bill also makes conforming amendments.

Effective Date: (Amended) Upon passage; July 1, 2008; July 1, 2009.

Explanation of State Expenditures: *Data Match System:* The Department of Workforce Development could incur additional administrative costs associated with the operation of the match system. The

department is required to pay financial institutions a reasonable fee of at least \$5 for each warrant issued to the financial institution. The match system would be similar to the system used by the Department of Revenue with individuals.

(Revised) *Employee Classification*: The impact on the Department of Labor will depend on the number of complaints filed. Assuming two additional investigators would be needed at \$36,557 and an assistant at \$24,715, then the increase in cost would be about \$147,750 for FY 2009 and \$144,432 for FY 2010.

The funds and resources required above could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this provision will depend upon legislative and administrative actions. The Department of Labor as of January 7, 2008, had nine vacant positions valued at about \$290,732. None of the nine positions had been vacant for more than 6 months.

(Revised) *Illegal Immigration*: Net Appropriations: The legislation appropriates \$ 1.6 M during FY 2009 to the following agencies:

Agency	Proposed FY 2009 Appropriation
Indiana State Police Department	\$1,000,000
Office of the Attorney General	\$500,000
Commission on the Hispanic/Latino Affairs	\$50,000
Immigration Cost Impact Commission	\$50,000
TOTAL	\$1,600,000

The State Police Department (SPD) will experience an increase in administrative time to negotiate the terms of the pilot program memorandum. The SPD is also required to apply for funding from the federal government to cover the costs to appoint local law enforcement officers to carry out the program. The legislation appropriates \$1.0 M for the operations of SPD in order to train law enforcement officers under the memorandum. These funds are nonreverting and remain available for SPD's use until the requirements of the legislation are fulfilled.

The bill requires Department of Workforce Development (DWD) to verify the lawful presence of individuals that apply for unemployment compensation benefits in accordance with federal law.

The legislation appropriates \$500,000 to the Attorney General (AG) for the provisions of the legislation. These funds are nonreverting and remain available for use until the provisions of the legislation are fulfilled.

The AG does not currently investigate complaints regarding employment of unauthorized aliens. The AG currently forwards complaints on employment of unauthorized aliens to either the U.S. Department of Labor or the U.S. Immigration and Customs Enforcement (ICE).

Under the provisions of this bill, the AG is required to maintain all court orders dealing with business license suspension or revocation of offending employers, make these orders available on the AG's website, and establish and maintain a database of violators.

Under the legislation, the AG may investigate complaints filed that an employer knowingly employed an unauthorized alien. Included in the legislation is the ability for state agencies and political subdivisions to also file complaints with the AG that contractors or subcontractors have knowingly employed unauthorized aliens. The legislation also stipulates that the AG shall notify the U.S. Immigration and Customs Enforcement if an employer has knowingly employed an unauthorized alien. If the AG determines that (1) an employer knowingly employed an unauthorized alien, and (2) any defense to knowingly employing an unauthorized alien specified in the legislation does not apply, the AG is authorized to notify the Department of Labor regarding the incident.

Under the legislation, if the AG notifies Department of Labor (DOL) that an employer has knowingly employed an unauthorized alien, DOL may initiate an administrative proceeding to determine if the complaint is substantiated. The legislation requires DOL to employ a sufficient number of administrative law judges in order to meet the volume of hearings necessary under the provisions of the legislation. DOL estimates a need for a staff attorney to meet the volume of hearings that may result from the legislation and may work with the AG to utilize staff attorneys to process hearings if volumes are larger than initially expected in the first year of implementation. The increased staff cost for a full-time staff attorney in the first year of implementation is \$63,000. Actual administrative reviews that may take place as a result of the legislation are indeterminable.

The bill prohibits a state agency or political subdivision from entering into or renewing a public contract for services with a contractor if the state agency or political subdivision knows that the contractor employs or contracts with unauthorized aliens. The additional time and expense to verify that each employee involved with a state contract (including subcontractors employed by the contractor) is not an unauthorized alien may result in additional costs being passed on to the state during price negotiations of future contracts.

(Revised) *Commission on Hispanic/Latino Affairs*: The bill appropriates \$50,000 to the Commission on Hispanic/Latino Affairs to fund a study that reports the requirements an individual must meet to qualify for naturalization and the citizenship process in the United States. Any unused funding at the end of FY 2009 reverts to the state General Fund.

(Revised) *Immigration Cost Impact Commission*: The bill establishes the Immigration Cost Impact Commission that is intended to study the impact that immigration has in the state of Indiana and appropriates \$50,000 for their expenses. Any unused funds revert to the state General Fund at the end of FY 2009. The commission is made up of 13 members, of which, 2 are state Senators, 2 are state Representatives, 3 are lay members appointed by the Governor, and the remaining 6 are state employees. State employees that serve on the Commission are entitled to travel expense reimbursement. All members that are not state employees are entitled to the minimum salary per diem and reimbursement of traveling expenses. The Commission is required to meet a minimum of four times a year but can meet additional times at the chair's discretion.

(Revised) *Background Information-*

The AG's General Fund appropriation is \$15.4 M for FY 2008. The AG did not revert any of their General Fund appropriation at the close of FY 2007. As of the beginning of FY 2008, the AG had 31 vacancies worth

\$311,302 in salary.

Over the current biennium, the State Police Department will receive approximately \$20.8 M in federal funds for various programs, including two Homeland Security programs. The SPD reverted approximately \$185,000 to the state General Fund at the close of FY 2007.

DOL reverted approximately \$649,000 to the General Fund in FY 2007 and at the beginning of FY 2008 had 12 vacant positions worth \$366,000 in salary.

There are two programs that are in common usage for verification of an employee's legal residency. They are called the E-Verify and SAVE programs. The E-Verify program is currently free to all online registered users. SAVE automatically charges a minimum monthly service fee of \$25 for verifications, or \$300 per year.

As of 2005, based on the PEW Hispanic Center's estimate, there were between 55,000 and 85,000 unauthorized aliens in Indiana, or about 0.5% to 0.75% of the nation's estimated 11.5 million unauthorized aliens. There were an estimated 128,000 authorized immigrants admitted to the United States during FY 2006 that claimed Indiana as their state of destination. There have been an additional 55,000 immigrants in the state of Indiana that have been legalized between the years 1997 and 2006.

Explanation of State Revenues: (Revised) *Data Match System:* The bill should aid the Department of Workforce Development in the collection of unpaid unemployment insurance assessments, interest, penalties, and associated collection costs. An employee of DWD who knowingly or intentionally discloses information for a purpose other than the collection of unpaid final assessments commits a Class A misdemeanor.

(Revised) *Employee Classification Fund:* The bill establishes the nonreverting Employee Classification Fund for the purposes of administering these provisions, investigating contractors and agents of contractors, and for funding other expenses incurred in carrying out the duties of the Department of Labor regarding employee classification. The fund consists of civil penalties collected for employee classification violations.

Civil penalties may be assessed of up to \$1,500 for each offense in the first audit of the contractor and up to \$2,500 for each repeated violation found by the department within 5 years of the first violation. The revenue will depend on the number of violations found by the department.

(Revised) *Health Saving Account:* This provision should have no fiscal impact.

(Revised) *Illegal Aliens:* Regarding public contracts and unauthorized aliens, the state could collect damages from a contractor if a contract were terminated because of a breach of contract for reasons specified by the bill. Contractors would be liable for actual damages if the contract were terminated by the state.

(Revised) *Penalty Provisions-* The bill provides for a Class A misdemeanor and a Class B misdemeanor. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000, and the maximum fine for a Class B misdemeanor is \$1,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$17), public

defense administration fee (\$3), court administration fee (\$3), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: (Revised) *Illegal Aliens*- Local law enforcement may experience increased expenditures dealing with the training of law enforcement officers if a memorandum of understanding is negotiated between the SPD and the federal government. Any increase in local expenditures is expected to be offset by appropriations made by the state for the purposes specified in the bill.

The caseload of local courts of jurisdiction may increase to the extent that individuals file false or frivolous complaints with the AG, which is a Class B misdemeanor.

(Revised) *Penalty Provisions*- A Class B misdemeanor is punishable by up to 180 days in jail. A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: (Revised) *Penalty Provisions*- If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

(Revised) *Illegal Immigration*: Local law enforcement agencies could receive federal funding through the state if local police officers were to participate in the immigration enforcement pilot program. Any funds received would depend on any monetary agreement reached between the state and federal government.

(Revised) *Health Saving Account*: This provision should have no fiscal impact.

State Agencies Affected: DWD, SPD; SDH; AG; DOC; DOL.

Local Agencies Affected: Local law enforcement, county prosecutors, trial courts.

Information Sources: PEW Hispanic Center estimates of unauthorized aliens in Indiana and the U.S.; *State of Indiana List of Appropriations, July 1, 2007, to June 30, 2008*; Brian Carnes, Legislative Liaison, SDH; Matt Light, Legislative Liaison, Office of the Attorney General; Indiana Sheriffs' Association; DOC; Sean Keefer, DOL.

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